

# Hughes Hubbard

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March 11, 2013

By ECF

Honorable Kiyo A. Matsumoto  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Room N406  
Brooklyn, New York 11201

Re: Perry v. Melendez (10 CV 4678) (KAM)(VVP)

Dear Judge Matsumoto:

We are writing in response to your request that the parties submit a joint letter to inform the Court of their plans for the case following the mistrial declared on March 4, 2013.

As a preliminary matter, Plaintiff has agreed to voluntarily dismiss the Failure to Intercede claim against Sergeant Price and the New York State Assault and Battery claims against Officer Melendez. A stipulation of dismissal will be submitted. As such, Plaintiff will only be proceeding on the remaining Excessive Force claim against Defendant Melendez.

Defendant intends to renew his Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(b) with respect to Plaintiff's excessive force claim against Officer Melendez. *See In re Fosamax Products Liability Litig.*, 2010 WL 1257299, at \*2 (S.D.N.Y. Mar. 26, 2010) (noting if a Rule 50(a) motion is not granted at the close of evidence, the moving party may renew its motion under Rule 50(b) within twenty-eight days of a mistrial).

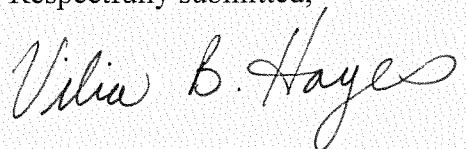
Defendant further requests an early trial date for any claim that remains in the case after decision on the motion. However, Plaintiff's counsel states that due to their schedules they are unable to retry this matter before the fall of this year. Both parties anticipate submitting additional *in limine* motions to address issues that occurred during the trial.

Plaintiff seeks to amend the Joint Pre-Trial Order a) to include the HHC records and the Social Security Disability records (subject to redactions), and b) to amend the JPTO to add additional witnesses who were at the scene. Defendant opposes those requests and requests that the court schedule a conference to address those issues.

With respect to the Court's suggestion that the parties consider settlement, both parties request that the matter be referred for a settlement conference before Magistrate Judge Viktor Pohorelsky or to a mediator.

Respectfully submitted,

cc: Jon Norinsberg, Esq. (by email)  
Gerald M. Cohen, Esq. (by email)

A handwritten signature in black ink that reads "Vilia B. Hayes". The signature is fluid and cursive, with "Vilia" on the first line and "B. Hayes" on the second line.